

## PATENT

**REMARKS**

In the Office Action, claims 7-9 and 21-24 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In the Office Action, claims 1-3 and 21-23 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent Number 5,184,615 to Nappholz et al.

In the Office Action, claims 1-5 and 21-24 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Number 6,192,275 to Zhu et al.

In the Office Action, claims 10, 12-15, and 17-20 are allowed over the prior art of record.

In the Office Action, claims 7-9 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. §112, second paragraph, set forth in this Office Action.

In response thereto, claims 1-5, 7-9, and 21-24 have been amended. Accordingly, claims 1-5, 7-10, 12-15, and 17-24 are now pending. Following is a discussion of the patentability of each of the pending claims.

**Preliminary Matter**

In response to the rejection of claims 7-9 and 21-24 under 35 U.S.C. §112, second paragraph, the following amendments have been made:

claim 7, line 9, the second occurrence of "the" has been replaced with —an—;

claim 8, line 2, "an" has been replaced with —the—;

claim 9, lines 1-2, "control circuitry" has been replaced with —controller—; and

claim 21, lines 2-3, "an evoked response detection algorithm" has been replaced with —a computer readable medium encoded with an evoked response detection algorithm—.

Withdrawal of the rejection of the claims is respectfully requested.

## PATENT

Independent Claim 1

For at least the same reasons for allowing claim 12, it is respectfully submitted that amended claim 1 is in condition for allowance.

Dependent Claims 2-5

Claims 2-5 depend from claim 1 and are similarly patentable. Accordingly, it is respectfully submitted that these claims are in condition for allowance.

Independent Claim 7 and Dependent Claims 8 and 9

Claim 7-9 are allowable over the prior art of record be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. §112, second paragraph, set forth in this Office Action. In response thereto, claims 7-9 have been amended to overcome the rejection(s) under 35 U.S.C. §112, second paragraph. Accordingly, it is respectfully submitted that these claims are in condition for allowance.

Independent Claims 10, 12, 14, 17, and 19 and Dependent Claims 13, 15, 18, and 20

Claim 10, 12-15, and 17-20 are allowed over the prior art of record.

Independent Claim 21

For at least the same reasons for allowing claim 17, it is respectfully submitted that amended claim 21 is in condition for allowance.

Dependent Claims 22-24

Claims 22-24 depend from claim 21 and are similarly patentable. Accordingly, it is respectfully submitted that these claims are in condition for allowance.

PATENT

**CONCLUSION**

In light of the above claim amendments and remarks, it is respectfully submitted that the application is in condition for allowance, and an early notice of allowance is requested.

Respectfully submitted,

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Date

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